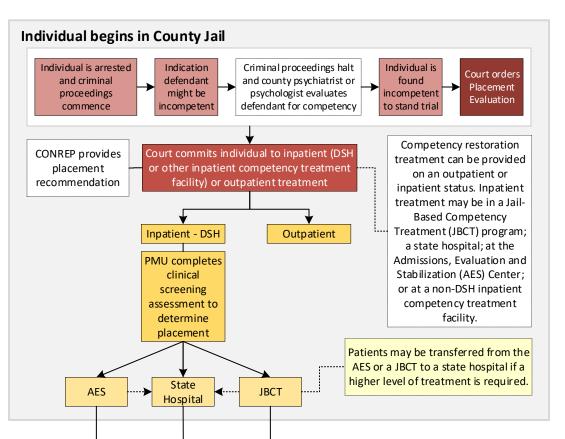
#### **Forensic Process Workload**



Incompetent to Stand Trial (IST): IST defendants are determined by the court to be unable to participate in their trial because they are not able to understand the nature of the criminal proceedings or assist counsel in the conduct of their defense. When the court finds a defendant incompetent to stand trial, he/she can be committed to DSH to provide clinical and medical services with the goal of restoring their competency and enabling them to return to court to resume their criminal proceedings.

Penal Code section 1370, subdivision (c)(2): Whenever a defendant is returned to the court pursuant to Penal Code section 1370, subdivisions (b)(1) or (b)(4) and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code (WIC), the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings.

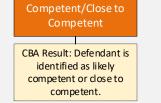
WIC section 5008, subdivision (h)(1)(A) Lanterman-Petris-Short (LPS) Conservatorship: Individual is "gravely disabled" defined as: a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

WIC section 5008, subdivision (h)(1)(B) Murphy Conservatorship: Individual is "gravely disabled" defined as: A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and certain facts exist including the complaint, indictment, or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person; as a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against him/her and to assist counsel in the conduct of his/her defense in a rational manner; the person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.

Penal Code section 1372, subdivision (e): Known as an EIST, this is a defendant who has been issued a certificate of restoration of competency, but as recommended by the facility Medical Director, and approved by the court, the defendant shall remain at the facility, e.g., state hospital, for continued treatment through the criminal proceedings in order to maintain

## **IST Treatment Pathways**

Upon admission ISTs receive a Competency Barriers Assessment (CBA) to determine their primary barrier to competency in order to provide efficient and focused treatment.



18 Months

21 Months

27 Months

36 Months

Language and/or Cultural Barrier CBA Result: Defendant is flagged with language and/or cultural barriers to

competency.

An individual may be shifted from one pathway to another or treated on more than one pathway at a time.

Malingering CBA Result: Suspected malingering is noted.

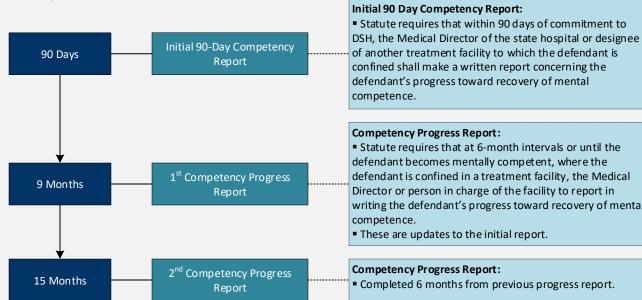
Cognitive Disorder CBA Result: Cognitive disorder noted as a primary barrier to competency.

CBA Result: Psychotic disorder noted as a primary barrier to competency.

Non-Restorable

CBA Result: Defendant is flagged as likely to be non-restorable.

Statutory Required Reports & Timeline Statutory required reports are time sensitive and driven by a defendant's length of stay (LOS). Reports may result in hearings and testimony.



subdivision (b)(4) Hearing

3<sup>rd</sup> Competency Progress

Report

4<sup>th</sup> Competency Progress

Report

Penal Code section 1370,

subdivision (c)(1) – Maximum

Term Commitment Report

Statute requires that at 6-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the Medical Director or person in charge of the facility to report in writing the defendant's progress toward recovery of mental

Completed 6 months from previous progress report.

# Penal Code section 1370, subdivision (b)(4) Hearing:

- Statute requires any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held. At each review by the court, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.
- This is the 'halfway point' of the 3-year maximum term.

# **Competency Progress Report:**

Completed 6 months from previous progress report.

# **Competency Progress Report:**

Completed 6 months from previous progress report.

#### Penal Code section 1370, subdivision (c)(1) – Maximum **Term Commitment Report:**

- Statute requires a defendant's maximum commitment to DSH for competency treatment is either the maximum term of imprisonment provided by law, or three years from date of commitment, whichever is shorter.
- If an IST reaches the end of his/her commitment term, they can be conserved pursuant to the LPS Act WIC section 5008, subdivisions (h)(1)(A) or (h)(1)(B) (Murphy Conservatorship).

SB 1187 (Beall, Chapter 1008), effective January 1, 2019, reduces the maximum term for felony IST competency restoration from three years to two years. In addition, SB 1187 deletes the requirement that a defendant be returned to court for a hearing if they are still incompetent after 18 months. DSH will continue to evaluate the impact of SB 1187 and will update methodologies and accompanying documents through the caseload estimate process.

# **Discharge Reports**

Discharge report options not driven by LOS. Reports may result in hearings and testimony.

#### Penal Code section 1372 – Certificate of Restoration

- If it is determined that the defendant has regained mental competence the Medical Director of a state hospital or designee, or director of other facility to which the defendant is committed, shall immediately certify that fact to the court by filing a certificate of restoration.
- The defendant shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration.
- Certificates of restoration filed for defendants identified as malingering are more likely to be subpoenaed than nonmalingering cases since DSH is disproving the court's original decision that the individual is incompetent. Literature states 17% of all IST admissions are potentially malingering.

### Penal Code section 1370, subdivision (b)(1) - Unlikely to Regain Competency Report

- Pursuant to Penal Code section 1370, subdivision (b)(1), if the competency progress report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings no later than 10 days following the receipt of the report.
- This report can be completed at any point during a defendant's stay.
- The county may choose to pursue an LPS or Murphy Conservatorship.

Penal Code section 1370, subdivision (c)(1) – Maximum Term Commitment Report

- Penal Code section 1370, subdivision (c)(1) states that no later than 90 days from a defendant's maximum commitment, a defendant who has not regained competence shall be returned to the committing court.
- An IST can be conserved pursuant to the LPS Act WIC section 5008, subdivisions (h)(1)(A) or (h)(1)(B) (Murphy Conservatorship).